

DATE: May 5, 1998

CASE NO. 96-SCA-0026

IN THE MATTER OF

WERNER LEMBKE, an Individual
d/b/a LEMBKE TRUCKING
Respondent

Before: PAUL H. TEITLER
Administrative Law Judge

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arose under the McNamara-O'Hara Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. § 351 *et seq.*, and the regulations issued thereunder at 29 C.F.R. Part 4. Authority for jurisdiction of this matter is conferred by § 4(a) of the Service Contract Act, 41 U.S.C. § 353(a) and 29 C.F.R. §§ 4.189 and 6.15. Consent Findings signed by the parties and all counsel (designated as Joint Exhibit 1) have been presented to the undersigned and the parties have requested that the Consent Findings be approved, as follows:

CONSENT FINDINGS

The parties, by and through their respective representatives, and pursuant to 29 C.F.R. § 618, agree to the following consent findings:

I

A complaint was issued under the McNamara-O'Hara Service Contract Act of 1965, as amended (41 U.S.C. § 351 *et seq.*), hereinafter called the Act, against Respondent Werner Lembke, an Individual d/b/a/ Lembke Trucking, hereinafter called Respondent, seeking recovery of unpaid compensation due service employees on contracts with the United States as well as debarment under Section 5(a) of the Act. Respondent filed an answer to the complaint, denying the violations alleged.

II

- (a) Respondent, at all times relevant to this proceeding, was an individual engaged under the name and style of Lembke Trucking providing mail hauling services with an office and place of business located at 7000 70th St. South, Cottage Grove, Minnesota, as well as conducting business operations at 720 S. Fourth Street, St. Paul Park, Minnesota.
- (b) Respondent at all times relevant to this proceeding was the sole owner of Lembke Trucking responsible for the day-to-day employment policies and practices of Lembke Trucking. As such, he was a party responsible within the meaning of Section 3 of the Act.

III

Respondent contracted with the Government to provide mail hauling services to the United States Postal Service. The contracts were as follows:

	<u>Contract No.</u>	<u>Award Date</u>
1.	55036	July 1, 1993
2.	55295	July 1, 1993

Each of the foregoing contracts was in excess of \$2,500.00 and was subject to and contained the representations and stipulations required by the Act and regulations issued thereunder (29 C.F.R. Part 4). The aforementioned contracts contained the labor standards provisions as required by the aforementioned regulations and the applicable Wage Determination No. 77-196 (Rev. 18), dated August 13, 1992. Effective July 1, 1995, Wage Determination 77-0196 (Rev. 22), dated March 31, 1995, was incorporated into and applicable to the aforementioned contracts.

IV

The services specified in the contracts identified in paragraph III herein were furnished in the United States by Respondent to the government of the United States through the use of service employees, as defined by Section 8(b) of the Act.

- (a) Respondent failed and refused to pay service employees employed in the performance of the contracts identified in paragraph III the minimum monetary wages and fringe benefits required under the contract.
- (b) Respondent agrees to a finding that a total of \$41,774.84 in unpaid minimum monetary wages and fringe benefits be paid to the persons and in the

amounts contained in Exhibit A, in the manner provided in paragraph VI below.

V

- (a) Respondent failed and refused to pay service employees employed in the performance of the contracts identified in paragraph III the minimum monetary wages and fringe benefits required under the contract.
- (b) Respondent agrees to a finding that a total of \$41,774.84 in unpaid minimum monetary wages and fringe benefits be paid to the persons and in the amounts contained in Exhibit A, in the manner provided in paragraph VI below.

VI

- (a) The United States Postal Service has withheld from Respondent under the contracts listed in paragraph III the sum of \$69,624.74 pursuant to the request of the United States Department of Labor in accordance with Section 3(a) of the Act.
 - (1) The parties hereto agree that the United States Postal Service shall release to the United States Department of Labor, Wage and Hour Division, the sum of \$41,774.84 to pay the persons and amounts contained in Exhibit A, in the manner prescribed by paragraph VI(b).
 - (2) The United States Department of Labor, Wage and Hour Division, releases its claim to the balance of the withheld funds, in the amount of \$27,849.89. Any monies payable to Respondent by the United States Postal Service from said blaance shall be paid as follows:
 - i) The sum of \$12,586.44 shall be paid to Morley Friedman, attorney, in satisfaction of his statutory attorney lien against the released funds for services in this proceeding, by check sent to:

Morley Friedman
2473 7th Street W #101
St. Paul, Minnesota 55116-2874

- ii) The sum of \$15,263.45 shall be paid to Werner Lembke by check sent to:

Werner Lembke
7000 70th Street
Cottage Grove, Minnesota 55016

- (b) The Wage and Hour Division, United States Department of Labor, shall distribute the back wages to the employees, or to their legal representatives, in the amounts set forth in Exhibit A attached hereto and incorporated herein by reference, and any amounts not distributed because of inability to locate the proper persons or because of such person's refusal to accept such funds, shall be deposited with the Treasurer of the United States as miscellaneous receipts.

VII

The parties further agree to the entry of an order, pursuant to Section 5(a) of the Act, denying the Respondent and any firm, corporation, partnership or association in which the Respondent has a substantial interest the award of any contract with the United States for a period of three years from the date of publication by the Comptroller General of a list containing Respondent's name as having been found to have violated the Service Contract Act.

VIII

Respondent further agrees not to employ any persons in the future contrary to the provisions of the Act, or any regulation issued thereunder and certifies that Respondent is presently in compliance with the provisions of the Act, and further agrees that he will continue in compliance therewith.

IX

The execution of these consent findings shall have the same force and effect as an order made after full hearing.

X

The parties further agree that the entire record on which the order may be based shall, pursuant to 29 C.F.R. § 6.18(b)(2) consist solely of the complaint and these consent findings.

XI

By execution of these consent findings the parties, pursuant to 29 C.F.R § 6.18(b)(3), waive any procedural steps before the Administrative Law Judge and Administrative Review Board regarding those matters which are the subject of the consent findings.

XII

The parties further agree that by execution of the consent findings the parties waive any right to challenge or contest the validity of the findings and order entered in accordance with these consent findings provided that any order hereon accepts all of the terms and conditions hereof.

FURTHER, each party agrees to bear all of his or her costs and/or attorney fees incurred in any stage of these proceedings to date.

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, as well as the criteria set forth in the Service Contract Act of 1965, as amended, 41 U.S.C. § 351, *et seq.*, and regulations found at 29 C.F.R. Parts 4,5, and 6, § 4(a) of the Service Contract Act, 41 U.S.C. § 353(a), and 29 C.F.R. § § 4.189 and 6.15 and, upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the parties. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the difficult legal and factual questions involved. I find that the settlement is fair and reasonable, and in compliance with 29 C.F.R. Parts 4,5, and 6.

Accordingly, it is hereby ORDERED that the Consent Findings be, and hereby is APPROVED.

IT IS FURTHER ORDERED THAT the United States Postal Service shall: (1) release to the United States Department of Labor, Wage and Hour Division, the sum of \$41,774.84 to pay the persons and amount contained in Exhibit A attached to JX-1, in the manner prescribed by paragraph VI(b).

IT IS FURTHER ORDERED THAT the monies payable to Respondent by the United States Postal Service from said balance shall be paid as follows: (1) the sum \$12,586.44 shall be paid to Morley Friedman, Esquire and (2) the sum of \$15,263.45 shall be paid to Werner Lembke.

IT IS FURTHER ORDERED THAT the Wage and Hour Division, United States Department of Labor, shall distribute the back wages to the employees, or to their legal

representatives, in the amounts set forth in Exhibit A attached to JX-1, and any amounts not distributed because of inability to locate the proper persons or because of such person's refusal to accept such funds, shall be deposited with the Treasurer of the United States as miscellaneous receipts.

IT IS FURTHER ORDERED THAT, pursuant to Section 5(a) of the Act, Respondent and any firm, corporation, partnership or association in which the Respondent has a substantial interest is denied the award of any contract with the United States and debarred under Section 5(a) for a period of three (3) years from the date of publication by the Comptroller General of a list containing Respondent's name as having been found to have violated the Service Contract Act.

IT IS FURTHER ORDERED THAT Respondent is prohibited from employing any persons in the future contrary to the provisions of the Act, or any regulation issued thereunder, and will continue to remain in compliance with the Act.

PAUL H. TEITLER
Administrative Law Judge

PHT:abr